by force of self-adopted rules, compel an interstate negro passenger to occupy the separate coach provided. In *Anderson* v *Louisville and N. R. Co.,* 62 Fed. 46, the court held that a statute of Kentucky, similar to the one in the principal case, was a regulation of interstate commerce and void, basing their decision on *Hall* v. *DeCuir, supra.* Similar statutes have been held void as to interstate passengers but valid as to intrastate passengers in *State of La. ex rel. Abbott* v. *Judge,* 44 La. Ann. 770; *Hart* v. *State,* 100 Md. 595. In *Smith* v. *State,* 100 Tenn. 494, the court held the Tennessee statute valid, both as to interstate and intrastate passengers, saying that the question was an open one in the United States Supreme Court, and that, in their opinion, it was a reasonable police regulation of the state, and not obnoxious to the Federal Constitution.

RIGHT OF PRIVACY—APPARENT EXTENSION OF DOCTRINE.—Plaintiff was the father of twins, whose bodies were connected from the shoulders down to the end of their bodies; they died, and plaintiff had them photographed, the photographer agreeing to make twelve photographs, and no more. He then made additional photographs from the negative, and had one copyrighted. Plaintiff sued for damages. *Held,* that the defendant was liable. "The corpse of the children was in the custody of the parents. The photographer had no authority to make the photographs except by their authority, and when he exceeded his authority he invaded their right." *Douglas* v. *Stokes,* (Ky. 1912) 149 S. W. 849.

Whether or not the common law recognized the right of privacy is a matter about which there has been much discussion. That it does not, has been held in *Roberson* v. *Rochester Co.,* 171 N. Y. 539, 64 N. E. 442, 89 Am. St. Rep. 828, 59 L. R. A. 478; *Henry* v. *Cherry & Webb,* 30 R. I. 13, 73 Atl. 97, 24 L. R. A. (N. S.) 991, 136 Am. St. Rep. 928, 18 Ann. Cas. 1006; and there is a dictum to the same effect in *Atkinson* v. *Doherty* 121 Mich. 372, 80 N. W. 285, 80 Am. St. Rep. 507. That it does, has been held in *Paversich* v. *Ins. Co.,* 122 Ga. 190, 50 S. E. 68, 69 L. R. A. 101, 106 Am. St. Rep. 107, 2 E. & A. Ann. Cas. 561; *Foster-Milburn Co.* v. *Chinn,* 134 Ky. 424, 120 S. W. 364, 34 L. R. A. (N. S.) 1137, 135 Am. St. Rep. 417; *Munden* v. *Harris,* 153 Mo. App. 652, 134 S. W. 1076. See 8 MICH. L. REV. 221. The Missouri Court contends for the right of privacy on the ground that the publication of one's picture is a violation of a property right. *Munden* v. *Harris,* supra. It is to be noted in the case at bar that the photogroph is not of the one who brings the action. It had already been decided in Kentucky that one has a right of action against another who publishes his picture. *Foster-Milburn Co.* v. *Chinn, supra.* But here the photograph was of the children of the plaintiff, and not of the plaintiff himself. In the cases of *Murray* v. *Lithographic Co.* 28 N. Y. Supp. 271, 31 Abb. N. C. 266, 8 Misc. 36, and *Schuyler* v. *Curtis* 147 N. Y. 434, the action was brought by relatives, but since in New York the right of privacy at common law is denied altogether, the question as to what relation the plaintiff must bear to the one whose picture is used in order that he may maintain an action, was not involved. The case of *Atkinson* v. *Doherty, supra,* while ostensibly placed on the broad ground that there is no right of privacy at common

law, has often been cited as authority for the proposition that if such a right exists it dies with the person. It is not absolutely clear from the opinion in the case at bar whether the court based its decision on the ground of a violation of the right of privacy, or on the ground of breach of contract. Certainly under the facts of the case the latter ground would have sufficed to support the decision (*Moore* v. *Rugg,* 44 Minn. 28, 46 N. W. 141) and that it was at least partially relied upon may be inferred from the importance which the court apparently attached to the case of *Pollard* v. *Photographic Co.* L. R. 40 Ch. Div. 345, which was decided on the ground of breach of contract. And certainly, if in any case one has a property right in his photograph, he had such under the facts of this case, where he hired the photographer to take this particular picture for him. However, from the language of the court, one is led to feel in coming to a decision they had strongly in mind the right of privacy. And if the case is considered to have been based on the violation of the right of privacy, the allowing of an action by one who was not the subject of the photograph marks another advance in the evolution of this comparatively new doctrine of the law.

SALES—FUNGIBLE GOODS—PASSING TITLE TO PART OF MASS WITHOUT SEPARATION.—Defendant ordered from plaintiff fifty cases of a particular brand of wine, both parties intending title to pass, but no specific cases were ever set aside as defendant's although more than the requisite number were in the plaintiff's cellar. Defendant later refusing to accept the wine, plaintiff sued for the price of goods bargained and sold. *Held,* that title to the wine had passed. *Gourd* v. *Healy,* (N. Y. 1912), 99 N. E. 1099.

The weight of authority is that title may be passed to a given amount of fungible goods without any separation from a larger mass containing it. *Kimberly* v. *Patchin,* 19 N. Y. 330; *Hutchinson* v. *Commonwealth,* 82 Pa. 472; *Chapman* v. *Shepard,* 39 Conn. 413; *Hires* v. *Hurff,* 40 N. J. L. 581; *Seldomridge* v. *Bank,* 87 Neb. 531; *Young* v. *Miles,* 20 Wis. 646; *Kingman* v. *Holmquist,* 36 Kan. 735; *Cloke* v. *Shafroth,* 137 Ill. 399; *Mackellar* v. *Pillsbury,* 48 Minn. 396; *Waldron* v. *Chase,* 37 Me. 414 (cf. 85 Me. 500); WILLISTON, SALES, § 156, and note in 26 L. R. A. (N. S.) 57. These cases contend that the parties ought to be, and are, able to pass title as above stated. *Contra,* that it is impossible for the parties to pass title under such circumstances, see *Mercer Nat. Bank* v. *Hawkins,* 104 Ky. 171; *Keeler* v. *Goodwin,* 111 Mass. 490; *Jeraulds* v. *Brown,* 64 N. H. 606; *Walder* v. *Belcher,* 33 N. C. 609; *Commercial Nat. Bank* v. *Gillette,* 90 Ind. 268; The last case agrees that the title cannot pass unless the goods are specified, and defends the rule on the ground that it discourages speculative sales and protects purchasers and creditors. The SALES ACT, § 6, ¶ 2, provides that title to fungible goods shall pass if such is the intent, and that the parties shall become tenants in common. The introductory part of the act defines fungible goods as those "any unit of which is from its nature or from mercantile usage equivalent to any other unit." As to particular classes of goods, see WILLISTON, SALES, § 159, and the note in L. R. A. (N. S.) cited above. It may be doubted whether cases of bottled wine should be considered fungible goods.